Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–83–11 OF 2014 (B)
ZULKEFLI CJ (MALAYA), SURIYADI, HASAN LAH, ZAINUN ALI AND AZIAH ALI FCJJ
14 JULY 2016

Civil Procedure — Parties — Selangor Legislative Assembly and Committee of Rights and Privileges named as parties by plaintiff — Assembly passed motion that plaintiff be referred to committee on charge of contempt — Whether assembly and committee had capacity to be impleaded in legal proceedings — Whether plaintiff ought to have named all members of assembly and committee that were being sued — Whether there had been any prejudice caused by failure to state names of members — Whether proper party impleaded — Secretary of committee — Whether secretary had legal personality — Whether secretary merely following orders of committee in issuing summons — Whether secretary had capacity to be named as party to legal proceedings

Constitutional Law — Constitution — Immunity against court proceedings — Whether validity of any proceedings in Selangor Legislative Assembly could be questioned in any court — Whether assembly acted within its constitutional and legal powers — Whether charge of contempt violated Federal Constitution and Selangor State Constitution — Whether resolution prescribing alleged contempt and referring plaintiff to Committee of Privileges unconstitutional

The plaintiff/respondent ('the plaintiff') was at all material times an advocate and solicitor. The plaintiff had upon the instructions of his client issued a letter of demand to YB Dato' Teng Chang Kim, the Speaker of the Selangor Legislative Assembly ('the speaker'), to pay the costs of a civil suit initiated by the plaintiff's client against the speaker. The letter demanding the payment of RM40,000 as costs ('the letter') was served on the solicitors of the speaker. The letter was brought to the attention of the Selangor Legislative Assembly ('the assembly'), which then passed a motion resolving that the plaintiff and his client be referred to the Committee of Rights and Privileges ('the committee') on a charge of contempt. It was the assembly's stand that the act of sending to the speaker a letter which contained language that was indecent, insolent and threatening amounted to an offence of contempt of the assembly. Subsequently, the secretary of the committee ('the secretary') issued a summons against the plaintiff to appear before the committee to explain the alleged contempt. The plaintiff filed an originating summons in the High Court

against the assembly, the secretary, and the committee ('the defendants'). It was the plaintiff's case that the summons issued by the secretary to answer the charge of contempt of the assembly violated the Federal Constitution and the Selangor State Constitution and was therefore unconstitutional. The plaintiff argued that the issuing of the legal letter of demand to the speaker could not be construed as a contempt of the assembly that required him to attend the hearing of the committee as set out in the summons. The High Court found that the resolution prescribing the alleged contempt and referring the plaintiff to the committee to be unconstitutional, being ultra vires the Schedule of the Selangor State Constitution and the Standing Orders of the Assembly, made pursuant to art LXXVII of the Selangor State Constitution. As such, the High Court found in favour of the plaintiff and held that the plaintiff was not required to attend the hearing of the committee as set out in the summons. The defendants filed an appeal against the decision of the High Court. However, the defendants' appeal was dismissed by the Court of Appeal on the ground that no provision had been made to provide for the offence of contempt under which the plaintiff was charged. Thus, the Court of Appeal upheld the High Court's declaration that the summons was ultra vires the Schedule of the Selangor State Constitution. The defendants obtained the leave of the Federal Court to proceed with the present appeal. In this appeal the defendants submitted that based on the relevant laws of the Selangor State Constitution, the assembly could not be named as a defendant in these proceedings. Instead the defendants argued that the proper party should rightly be the speaker of the state assembly in his or her official capacity. It was also the contention of the defendants that the second defendant as the secretary of the committee was merely following the orders of the committee in issuing the summons and did not have the capacity or legal personality to be named as a party to legal proceedings. Consequently, the defendants submitted that the plaintiff's case should be dismissed at the threshold as no proper party was impleaded. Alternatively, if the proper party has been impleaded, the defendants contended that there was an immunity against court proceedings granted by art 72(1) of the Federal Constitution, which included the summons issued by the committee. In response the plaintiff submitted that the naming of the state legislative assembly in court proceedings was not without precedent and that even if the plaintiff had failed to name the speaker of the state legislative assembly in the suit, there had been no prejudice caused. The plaintiff further submitted that the immunity of the assembly under art 72 of the Federal Constitution did not apply to the present case.

Held, dismissing the appeal with costs:

(1) In this case the plaintiff had named the assembly and the committee as parties. As the assembly and the committee just like the Cabinet were 'creatures' of the Constitution, the plaintiff ought to have named all the members of the assembly and the committee and stated that they were

being sued as the assembly and the committee respectively. Notwithstanding the assembly and the committee not being properly pleaded, the courts had always accepted the naming of an institution created by the Federal and State Constitutions without the need of naming the members of that institution. From the plethora of cases cited it was clear that in Malaysia the naming of the entities in the Federal and State Constitutions without naming the members thereof was an accepted procedural practice and did not prejudice the parties concerned (see paras 25–30 & 34).

(2) As regards the secretary of the committee it was clear that he had a legal personality and that it was sufficient if he alone was pleaded. The secretary was merely following orders made by the assembly and on the face of the summons signed by the secretary, he was acting pursuant to the Schedule of the Selangor State Constitution and the standing orders on behalf of the committee. In the circumstances of this case, the secretary was a proper party to oppose the declarations sought by the plaintiff (see para 35).

(3) Under art 72(1) of the Federal Constitution the validity of any proceedings in the legislative assembly of any state should not be questioned in any court. However, the assembly's powers were limited by the Selangor State Constitution. Thus, as regards this appeal, it was clear that the assembly should act within its constitutional and legal powers before the protection provided for by art 72(1) could arise or before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. A careful perusal of the provisions of the Schedule in the Selangor State Constitution, which conferred the power and privileges of the assembly, revealed no provision that provided for contempt committed outside the legislative assembly. The defendants too had failed to show which provision in the schedule was relied on to pass the resolution. The assembly had therefore exceeded the jurisdiction provided for in the Schedule. Further, the standing orders of the assembly and the Contempt of the House Enactment revealed no provision prescribing for contempt committed beyond the walls of the assembly. In the circumstances, the resolution prescribing the alleged contempt and referring the plaintiff to the committee of privileges was unconstitutional, being ultra vires the Schedule of the Selangor State Constitution and the standing orders of the assembly, made pursuant to art 72 (see paras 36–38 & 46–49).

[Bahasa Malaysia summary

Plaintif/responden ('plaintif') adalah pada semua masa material merupakan seorang peguambela dan peguamcara. Plaintif, atas arahan anak guamnya mengeluarkan surat tuntutan kepada YB Dato' Teng Chang Kim, Pengerusi Majlis Dewan Undangan Negeri Selangor ('pengerusi majlis'), untuk

membayar kos saman sivil yang dimulakan oleh anak guam plaintif terhadap pengerusi majlis. Surat menuntut pembayaran RM40,000 sebagai kos ('surat') telah diserahkan kepada peguamcara pengerusi majlis tersebut. Surat tersebut telah dibawa kepada perhatian Dewan Undangan Selangor ('dewan'), yang kemudiannya meluluskan usul penyelesaian bahawa plaintif dan anak guamnya dirujuk kepada Jawatankuasa Hak dan Kebebasan ('jawatankuasa') atas tuduhan menghina mahkamah. Pendirian dewan adalah bahawa tindakan menghantar surat yang mengandungi bahasa yang tidak sopan, kurang ajar dan mengancam kepada pengerusi majlis merupakan kesalahan menghina dewan. Sehubungan dengan itu, setiausaha jawatankuasa ('setiausaha') mengeluarkan saman terhadap plaintif untuk hadir di hadapan jawatankuasa untuk menjelaskan penghinaan seperti yang didakwa. Plaintif memfailkan saman pemula di Mahkamah Tinggi terhadap dewan, setiausaha, dan jawatankuasa ('defendan-defendan'). Kes plaintif adalah bahawa saman yang dikeluarkan oleh setiausaha untuk menjawab tuduhan menghina dewan melanggar Perlembagaan Persekutuan dan Perlembagaan Negeri Selangor dan oleh itu tidak mengikut perlembagaan. Plaintif berhujah bahawa pengeluaran surat tuntutan undang-undang kepada pengerusi majlis tidak boleh ditafsirkan sebagai suatu penghinaan terhadap dewan yang memerlukan beliau untuk menghadiri pendengaran jawatankuasa seperti yang dinyatakan dalam saman. Mahkamah Tinggi mendapati bahawa resolusi yang menetapkan penghinaan seperti yang didakwa dan merujuk plaintif kepada jawatankuasa adalah tidak mengikut perlembagaan, ultra vires dengan Jadual Perlembagaan Negeri Selangor dan perintah-perintah tetap dewan, yang dibuat menurut perkara LXXVII Perlembagaan Negeri Selangor. Oleh itu, Mahkamah Tinggi membuat dapatan memihak kepada plaintif dan memutuskan bahawa plaintif tidak perlu menghadiri pendengaran jawatankuasa seperti yang dinyatakan dalam saman. Defendan-defendan memfailkan rayuan terhadap keputusan Mahkamah Tinggi. Walau bagaimanapun, rayuan defendan telah ditolak oleh Mahkamah Rayuan atas alasan bahawa tiada peruntukan telah dibuat untuk menyatakan kesalahan menghina di mana plaintif didakwa. Oleh itu, Mahkamah Rayuan mengekalkan pengisytiharan Mahkamah Tinggi bahawa saman tersebut adalah ultra vires dengan Jadual Perlembagaan Negeri Selangor. Defendan-defendan mendapat kebenaran Mahkamah Persekutuan untuk meneruskan rayuan ini. Dalam rayuan ini defendan-defendan berhujah bahawa berdasarkan undang-undang yang berkaitan dalam Perlembagaan Negeri Selangor, dewan tidak boleh dinamakan sebagai defendan-defendan dalam prosiding ini. Sebaliknya defendan berhujah bahawa pihak yang sewajarnya sepatutnya pengerusi majlis dewan undangan negeri dalam kapasiti rasmi beliau. Defendan-defendan juga menghujah bahawa defendan kedua sebagai setiausaha jawatankuasa hanya mengikut arahan jawatankuasa dalam mengeluarkan saman dan tidak mempunyai kapasiti atau keperibadian undang-undang untuk dinamakan sebagai pihak dalam prosiding undang-undang. Berikutan itu, defendan-defendan berhujah bahawa kes plaintif seharusnya ditolak dari awal memandangkan tidak pihak yang

sewajarnya diplid. Sebagai alternatif, jika parti yang sewajarnya diplid, defendan-defendan menegaskan bahawa terdapat satu imuniti terhadap prosiding mahkamah yang diberikan oleh perkara 72(1) Perlembagaan Persekutuan ('Perlembagaan'), termasuk saman yang dikeluarkan oleh jawatankuasa. Sebagai balasan plaintif berhujah bahawa penamaan dewan undangan negeri dalam prosiding mahkamah adalah bukan tanpa duluan dan meskipun plaintif telah gagal untuk menamakan pengerusi majlis dewan undangan negeri dalam saman tersebut, tiada sebarang prejudis yang timbul. Plaintif selanjutnya berhujah bahawa imuniti dewan di bawah perkara 72 Perlembagaan tidak terpakai bagi kes ini.

Diputuskan, menolak rayuan dengan kos:

(1) Dalam kes ini plaintif telah menamakan dewan dan jawatankuasa sebagai pihak-pihak. Memandangkan dewan dan jawatankuasa seperti Kabinet merupakan 'ciptaan' Perlembagaan, plaintif sepatutnya menamakan semua ahli dewan dan jawatankuasa dan menyatakan bahawa mereka telah disaman sebagai dewan dan jawatankuasa, secara berasingan. Meskipun dewan dan jawatankuasa tidak diplid sewajarnya, mahkamah sentiasa menerima penamaan institusi yang dicipta oleh Kerajaan Persekutuan dan Perlembagaan Negeri tanpa perlu menamakan ahli-ahli institusi tersebut. Dari pelbagai jenis kes yang dipetik, adalah jelas bahawa di Malaysia penamaan entiti dalam Kerajaan Persekutuan dan Perlembagaan Negeri tanpa menamakan ahli-ahli tersebut adalah satu amalan prosedur yang diterima dan tidak memudaratkan pihak yang berkenaan (lihat perenggan 25–30 & 34).

(2) Berkenaan dengan setiausaha jawatankuasa adalah jelas bahawa beliau mempunyai keperibadian undang-undang dan adalah mencukupi jika beliau sahaja yang diplid. Setiausaha hanya mengikuti perintah yang dibuat oleh dewan dan di muka saman yang ditandatangani oleh setiausaha, beliau telah bertindak menurut Jadual Perlembagaan Negeri Selangor dan peraturan mesyuarat bagi pihak jawatankuasa. Dalam keadaan kes ini, setiausaha adalah pihak yang tepat untuk menentang pengisytiharan yang dituntut oleh plaintif (lihat perenggan 35).

(3) Di bawah perkara 72(1) Perlembagaan kesahan apa-apa prosiding di dalam dewan undangan di mana-mana negeri tidak boleh dipersoalkan dalam mana-mana mahkamah. Walau bagaimanapun, kuasa dewan ini dihadkan oleh Perlembagaan Negeri Selangor. Oleh itu, berkenaan dengan rayuan ini, adalah jelas bahawa perhimpunan perlu bertindak dalam kuasa perlembagaan dan undang-undang sebelum perlindungan yang diperuntukkan oleh perkara 72(1) timbul atau sebelum meluluskan resolusi berhubung tindakan penghinaan yang dilakukan di luar dinding perhimpunan. Satu penelitian teliti peruntukan Jadual dalam Perlembagaan Negeri Selangor yang memberikan kuasa dan

keistimewaan dewan, mendedahkan tiada peruntukan yang disediakan untuk penghinaan yang dilakukan di luar dewan undangan. Defendan juga gagal untuk menunjukkan peruntukan yang mana dalam jadual yang dipergantungkan untuk meluluskan resolusi. Oleh itu, dewan dengan itu telah melebihi bidang kuasa yang diperuntukkan dalam Jadual. Selanjutnya, perintah tetap dewan dan Enakmen Penghinaan Dewan mendedahkan tiada peruntukan untuk penghinaan yang dilakukan di luar dinding dewan. Dalam keadaan ini, resolusi yang menetapkan penghinaan yang didakwa dan merujuk plaintif kepada jawatankuasa keistimewaan adalah tidak mengikut perlembagaan, iaitu ultra vires dengan Jadual Perlembagaan Negeri Selangor dan perintah-perintah tetap dewan, yang dibuat menurut perkara 72 (lihat perenggan 36–38 & 46–49).]

Notes

For cases on constitution in general, see 3(2) *Mallal's Digest* (5th Ed, 2015) paras 2435–2499.

For cases on parties in general, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 6456–6747.

Cases referred to

Abdul Karim bin Abdul Ghani v Legislative Assembly of Sabah [1988] 1 MLJ 171, SC (refd)

Ah Chong v Legislative Assembly of Western Samoa & Ors [2001] NZAR 418, CA (refd)

Ah Thian v Government of Malaysia [1976] 2 MLJ 112, FC (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697; [1992] 1 CLJ Rep 72, SC (refd)

Election Commission, Malaysia v Abdul Fatah bin Haji Haron [1987] 2 MLJ 716, SC (refd)

Haji Salleh bin Jafaruddin v Datuk Celestine Ujang & Ors [1986] 2 MLJ 412, SC (refd)

Canada (House of Commons) v Canada (Labour Relations Board) [1986] FCJ 372, FC (refd)

Doyle v Falconer (1866) LR 1 PC 328, PC (refd)

Fan Yew Teng v Government of Malaysia [1976] 2 MLJ 262 (distd)

Karpal Singh v Sultan of Selangor [1988] 1 MLJ 64 (refd)

Kielley v Carson (1842) 4 Moo PCC 63, PC (refd)

Owi Cheng Ian v Suruhanjaya Pasukan Polis Diraja Malaysia & Ors [2014] 6 MLJ 695, CA (refd)

Russian Commercial and Industrial Bank v British Bank For Foreign Trade, Limited [1921] 2 AC 438, HL (refd)

Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 7 MLJ 1, FC (refd)

Teh Cheng Poh v PP [1979] 1 MLJ 50, PC (refd)

A *Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors* [2014] 4 MLJ 12, FC (distd)

Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor [1993] MLJU 531, HC (refd)

B *Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor* [1993] 1 MLJ 26, HC (refd)

Tun Datuk Haji Mohamed Adnan Robert v Tun Datu Haji Mustapha bin Datu Harun; Datuk Joseph Pairin Kitingan v Tun Datu Haji Mustapha bin Datu

C *Harun* [1987] 1 MLJ 471, SC (refd)

YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24; [2009] 4 CLJ 253, FC (folld)

D *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2014] 6 MLJ 812, FC (refd)

Legislation referred to

Contempt of the House (State of Selangor) Enactment 2009

E Federal Constitution arts 10(1)(c), 32(1), 53, 63(1), 64, 72, 72(1)

Laws of the Constitution of Kelantan art XXXIA

Laws of the Constitution of Perak art LXIV

Laws of the Constitution of Sabah art 18(2)(d)

Laws of the Constitution of Selangor 1959 arts LXXV(1), LXXVII, Schedule

F Members of Parliament (Remuneration) Act 1980

Perak Legislative Assembly (Privileges) Enactment 1959

Gopal Sri Ram (Chan Kok Keong, Robin FS Lim and David Yii with him) (Chan & Assoc) for the appellants.

G *Firoz Hussein (Cheng Mai, Norhazira and Abu Haiyan with him) (Hafarizam Wan & Aisha Mubarak) for the respondent.*

Amarjeet Singh Serjit Singh (Senior Federal Counsel, Attorney General's Chambers) as amicus curiae.

Nizam Bashir (Bar Council Legal Aid Centre) watching brief.

H

Zulkefli CJ (Malaya) (delivering judgment of the court):

INTRODUCTION

I **[1]** This is an appeal by the appellants against the decision of the Court of Appeal in affirming the decision of the High Court allowing the declarations sought by the respondent in relation to the summons issued by the second appellant summoning the respondent to attend a hearing of the Committee of Rights and Privileges ('the committee') of the Selangor State Legislative

Assembly ('the assembly'). The respondent was the plaintiff and the appellants were the defendants before the High Court. We shall refer to the parties as they were in the High Court.

[2] Leave to appeal to this court has been granted on the following questions of law:

(a) whether the Dewan Undangan Negeri has the capacity to be impleaded in legal proceedings?

(b) whether the Secretary of the Committee of Rights and Privileges and the Committee of Rights and Privileges have the capacity to be impleaded in legal proceedings? and

(c) whether upon the true construction of art 72(1) of the Federal Constitution the expression 'proceedings in the Legislative Assembly of any State' includes anything said or done by a non-member of a legislative assembly outside its precints?

[3] In the appeal before this court learned senior federal counsel, En Amarjeet Singh of the Attorney General's Chambers appeared as amicus curiae to the court.

BACKGROUND FACTS

[4] The relevant background facts of the case are these. The plaintiff is an advocate and solicitor. On instruction of his client YB Badrul Hisham bin Abdullah, the Selangor State Assemblyman for the State Constituency of N46 Port Klang, the plaintiff had signed and issued a letter of demand dated 29 March 2011 for payment of costs awarded in a civil suit filed by YB Badrul Hisham against YB Dato' Teng Chang Kim, the Speaker of the Selangor Legislative Assembly ('the speaker'). The letter was served on the solicitors of the speaker. The contents of the letter of demand are as follows:

> We have our client's strict instruction that the cost of RM40,000.00 is to be paid to the plaintiff and/or us as Solicitors for the plaintiff within SEVEN (7) DAYS from this letter.
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> We also have our client's instruction to proceed with the Bankruptcy Proceeding against your client for the failure to comply with the order dated 18th February 2011 which was served on you on 22nd March 2011 as solicitors on record for the 1st defendant.

[5] The letter was brought to the attention of the assembly. On 1 April 2011 the assembly passed a motion resolving that the plaintiff and his client be referred to the committee on a charge that they had committed an offence of

contempt of the assembly by the act of sending to the speaker a letter which contained language that was indecent, insolent and threatening ('the alleged contempt').

[6] On 12 April 2011, the secretary of the committee ('the secretary') issued a summons ('the summons') which ordered the plaintiff to appear before the committee on the 29 April 2011 to explain the alleged contempt. The contents of the summons are as follows:

> Pada menjalankan kuasa-kuasa yang diperuntukkan oleh Jadual (Perkara LXXVII), Kuasa dan Keistimewaan Dewan Negeri, Undang-Undang Tubuh Kerajaan Selangor, 1959, dan Peraturan-Peraturan Tetap Negeri Selangor, saya bagi pihak Jawatankuasa Hak dan Kebebasan dengan ini memerintahkan bahawa kamu, Mohd Hafarizam bin Harun, selaku peguam kepada YB Tuan Badrul Hisham bin Abdullah dikehendaki menghadirkan diri di hadapan Jawatankuasa Hak dan Kebebasan pada 29 April 2011 ... untuk memberikan penjelasan terhadap tuduhan ... melakukan kesalahan menghina Dewan dengan menghantar sepucuk surat bertarikh 29 Mac 2011 kepada Tuan Speaker Dewan Negeri Selangor yang berbahasa amat tidak senonoh, biadab dan mengugut.

[7] On 26 April 2011, the plaintiff filed an originating summons at the High Court at Shah Alam against the assembly, the secretary, and the committee, and on 31 May 2011 obtained the following declarations:

(a) the summons issued by the secretary summoning the plaintiff to appear before the committee to answer the charge of contempt of the assembly in the circumstances set out in the summons violates the Federal Constitution and the Selangor State Constitution and is therefore unconstitutional;

(b) the summons is ultra vires the art LXXVII and the Schedule of the Laws of the Constitution of Selangor 1959 ('the Selangor State Constitution') which sets out the powers and privileges of the assembly, the standing orders of the assembly and the Contempt of the House (State of Selangor) Enactment 2009 ('the Enactment 2009') and is therefore, null and void;

(c) the summons is in violation of the law;

(d) that issuing a legal letter of demand in the manner and substance of the letter dated 29 March 2011 cannot be construed as a contempt of the assembly;

(e) the plaintiff is not required to attend the hearing of the committee as set out in the summons;

(f) that any decision, order or matter which arises from the issuance or hearing pursuant to the summons is null and void; and

(g) that the plaintiff is not bound by any direction or order of the defendants which arises out of the motion or summons.

[8] The defendants filed an appeal against the decision of the High Court. The defendants' appeal was dismissed by the Court of Appeal on the ground that no provision has been made to provide for the offence of contempt under which the plaintiff was charged. The Court of Appeal in arriving at its decision amongst others applied the principle laid down in *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24. The Court of Appeal upheld the declaration that the summons was ultra vires the Schedule of the Selangor State Constitution and the Enactment 2009 and made the consequential order that any decision or order made affecting the plaintiff in relation to the summons was also null and void.

SUBMISSIONS OF THE DEFENDANTS

[9] On the first question posed before this court it was the submission of the defendants that the first defendant (as the assembly) does not have the capacity to be impleaded in legal proceedings. Learned counsel for the defendants in support of the defendants' contention referred to the decision of the New Zealand Court of Appeal in *Ah Chong v Legislative Assembly of Western Samoa & Ors* [2001] NZAR 418 and reads as follows:

> We have reservations about the somewhat novel course of naming a House of Legislature as a defendant. *It is not a body corporate and we doubt whether it can sue or be sued. The orthodox procedure would be to sue Ministers of the Speaker of other officer who might seek to enforce decisions of the House alleged to be invalid.* (Emphasis added.)

[10] Learned counsel for the defendant also referred to us the decision of the Canadian Federal Court of Appeal in *Canada (House of Commons) v Canada (Labour Relations Board)* [1986] FCJ 372 which, inter alia, held as follows:

> 26. By no process of reasoning or of imagination can I conceive of the House as being a person. It is an assembly of persons, albeit, no doubt, the most important one in the country. Nothing in the Constitution Act, 1867 nor in the law, custom and convention of the Constitution as I understand it, gives to the House corporate status or personality. Indeed everything points the other way. It is of the essence of a corporation that it shall be perpetual. But the House of Commons is by its nature an ephemeral thing, having by constitutional prescription a maximum life span of five years. When the House is dissolved it ceases to exist.
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> ...
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> 32. Whatever the status of Parliament, however, there is no authority that I know of to indicate that the House of Commons may be a person.

33. There is authority the other way. In Gabias c. L'Assemblee legislative de la province de Quebec ... Casgrain J., after quoting sections 71 and 80 of the Constitution Act, 1867, which provide for the Legislature and Legislative Assembly of Quebec in terms indistinguishable from what is found in sections 17 and 37 with regard to the Parliament and House of Commons of Canada, said as follows:

There is thus nothing in these provisions which confers on the Legislative Assembly a legal entity in the legal sense, with the right to bring an action at law. All the Constitution says is that the Legislative Assembly consists of sixty-five representatives of the people (now ninety five) who meet at least once a year to enact legislation. It is a legislative body which has no legal personality apart from that of each member and which, accordingly, may not be used as such. (Emphasis added.)

[11] Learned counsel for the defendants further submitted that likewise, there is nothing in the Selangor State Constitution that confers on the Selangor State Assembly a legal personality. The relevant laws of the Selangor State Constitution provides as follow:

LXI. The Legislature of the State shall consist of His Royal Highness and one House to be known as the Dewan Negeri and in English, the Legislative Assembly.

LXII(1). The Legislative Assembly shall consist of the number of elected members as the Legislature may by law provide.

[12] Based on the above provisions of the Selangor State Constitution it was contended for the defendants that the assembly as an assembly of persons, could not be named as a defendant in these proceedings. The proper party should rightly be the speaker of the state assembly in his or her official capacity (see the case of *Haji Salleh bin Jafaruddin v Datuk Celestine Ujang & Ors* [1986] 2 MLJ 412). The speaker is the person having the decision making power for the assembly.

[13] It was also the contention of the defendants that the second defendant as the secretary of the committee does not have the capacity or legal personality to be named as a party to legal proceedings. The secretary of the committee simply holds a clerical or administrative position and without any decision-making power. The second defendant, in issuing the summons dated 12 April 2011, was merely following out the orders of the committee. A person with no decision-making power cannot be the proper person to be named. Accordingly it was submitted for the defendants that the plaintiff's case should be dismissed at the threshold as no proper party was impleaded.

[14] Learned counsel for the defendants submitted that in the event the court does not agree with the defendants' submission that no proper party has been impleaded, the defendants contended that there is an immunity against court proceedings granted by art 72(1) of the Federal Constitution which includes the summons issued by the committee.

[15] It was impressed upon this court that the Court of Appeal had accepted the fact that it is outside the jurisdiction of any court to question the validity of the proceedings of the Selangor State Assembly. The case of *Haji Salleh bin Jafaruddin* is a case directly on point wherein it held that proceedings of a committee of the house are the proceedings of the assembly and amongst others said:

> It is clear that the standing orders have been made for the purpose of regulating the procedure for the proceedings of the Dewan and that the proceedings of the Committee of Privileges form part of the proceedings of the Dewan. Therefore to question the validity of the proceedings of the Committee of Privileges is to question the validity of the proceedings of the Dewan, and to do so in the court is forbidden under art 72(1) of the Federal Constitution.

[16] The defendants in their contention that it is outside the jurisdiction of any court to question the validity of the proceedings of the Selangor State Assembly cited also the following two decided cases:

> firstly, the Federal Court in *Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors* [2014] 4 MLJ 12 held at p 42 as follows:
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> > [48] Reverting to the declaration sought in the originating summons, in prayer (1), although the composition of SELCAT was challenged, what was effect questioned was the validity of the resolution of the SLA (establishing SELCAT) made in exercise of its collective and deliberative functions. The resolution was passed without any objection pursuant to a motion made in the meeting of the SLA. What was done by the SLA was done in the proceedings of the assembly, the validity of which could not be impeached or questioned in any court or tribunal out of the assembly in the light of art 72(1) of the Federal Constitution and the para 2 in the Schedule to the Selangor Constitution and the authorities we have adverted to. What was done by the SLA was therefore non-justiciable.
>
> secondly, in *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262, Chang Min Tat J (as he then was) quoted with approval SA de Smith in his *Judicial Review of Administrative Action* (3rd Ed) as follows:
>
> > *The courts have no jurisdiction to restrain by injunction, or otherwise to pass upon, any conduct that forms part of proceedings in Parliament, even though the matter in issue is not directly connected with the process of legislation*. In the well-known case of *Bradlaugh v Gosett* the court refused to award the plaintiff an injunction against the Serjeant-at-Arms to restrain him from enforcing an order of the House of Commons requiring him to exclude the plaintiff from the House, or a declaration that the order of the House was void. *Assuming that the plaintiff was right in his contention that the order of the House was based upon the misconstruction of a statute, nevertheless the courts had no jurisdiction to interfere, for the matter fell exclusively within the scope of the privilege of the*

House to regulate its own internal proceedings. (Emphasis added.)

[17] It was further submitted for the defendants that, even though as the signatory to the summons the second defendant was not a member of the Selangor State Assembly, it was obvious that the second defendant did so on behalf the committee in an administrative capacity. To hold that such summons come within the jurisdiction of the courts would be to circumvent the clear intention of art 72 of the Federal Constitution and render its protection illusory.

SUBMISSIONS OF THE PLAINTIFF

[18] On the first and second questions posed before this court it was submitted for the plaintiff that in Malaysia, the naming of a State Legislative Assembly in court proceedings is not without precedent. The Supreme Court in the case of *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697; [1992] 1 CLJ Rep 72 heard and disposed of the case on the basis that the Kelantan State Assembly was cited as a party to the proceedings. Further and in any event, even if the defendants are contending that the plaintiff has failed to name the speaker of the state legislative assembly in the suit, there has been no prejudice caused.

[19] Apart from the above case it was contended for the plaintiff that the case of *Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor* [1993] MLJU 531 also included the state legislative assembly as a party in a suit.

[20] Further it was contended for the plaintiff that at all material times, the defendants were in reality contesting the suit on behalf of the relevant parties but chose not to make an application to the court to join the speaker as an interested party. In the circumstances there has been no prejudice caused to the defendants by the plaintiff naming the first defendant as the Selangor State Assembly.

[21] On the third question posed before this court it was the submission of the plaintiff that the legislative assembly would be entitled to rely on the immunity under art 72 of the Federal Constitution if it can be established that the matters in contention fall within the provisions of the said art 72. It is the plaintiff's case that the immunity of the legislative assembly under art 72 of the Federal Constitution does not apply to the present case.

[22] Learned counsel for the plaintiff in his submission cited the case of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24; [2009] 4 CLJ 253

which, inter alia, provides that although the legislative assembly enjoys immunity from court proceedings, such immunity is limited by the supremacy of the Constitution. Thus, in a case where the legislative assembly exceeds its jurisdiction as provided for under the Constitution, the court will interfere.

[23] It is the plaintiff's case that the challenge in court made by him is not against the resolution of the assembly but the issuance of a summon to a non-member to answer a purported charge of contempt in relation to the issuance of a solicitors' letter to the solicitor of the speaker. It was submitted for the plaintiff that the summons dated 12 April 2011 issued by the defendants which was being challenged by the plaintiff had nothing to do with any proceedings in the assembly. It was not in respect of anything said or vote given by the defendants when taking part in any proceedings in the assembly and had nothing to do with anything published by or under the authority of the assembly.

[24] It was submitted for the plaintiff that his solicitors' legal letter of demand for costs, which was sent to a firm of solicitors representing the speaker of the house, in respect of costs granted by a court order was not a matter within the scope of the proceedings of the assembly where the assembly could act upon.

DECISION OF THIS COURT

[25] In this case the plaintiff named the assembly and the committee as parties. While this is not the right way to name these entities, we take the view there is no prejudice caused to the defendants. We also noted that there was no objection made of this fact in the proceedings before the High Court or the Court of Appeal.

[26] We are of the view that the proper way to implead the assembly and the committee was to name all the members and state that they were being sued as the assembly and committee respectively. The authority for this proposition is in the judgment of Lord Diplock in *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 at p 55 wherein His Lordship stated:

> This, however, does not leave the courts powerless to grant to the citizen a remedy in cases in which it can be established that a failure to exercise his power of revocation would be an abuse of his discretion. Article 32(1) of the Constitution makes the Yang di-Pertuan Agong immune from any proceedings whatsoever in any court. So mandamus to require him to revoke the Proclamation would not lie against him; *but since he is required in all executive functions to act in accordance with the advice of the cabinet, mandamus could, in Their Lordships' view, be sought against the members of the Cabinet requiring them to advise the Yang di-Pertuan Agong to revoke the proclamation*. (Emphasis added.)

[27] The assembly and the committee just like the Cabinet are 'creatures' of the Constitution. The plaintiff therefore, ought to have named all the members of the assembly and the committee and stating that they were being sued as the assembly and the committee respectively. In the present case, had the defendants raised the objection in the High Court of this technical procedural irregularity, it could have been easily cured by way of an amendment.

[28] Notwithstanding the assembly and the committee not being properly pleaded, the courts have always accepted the naming of an institution created by the Federal and State Constitutions without the need of naming the members of that institution. In this regard our courts have accepted the Legislative Assembly of the States as proper parties exemplified in the following cases:

(a) in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697 where an order was sought to declare art XXXIA of the Kelantan State Constitution null and void on the grounds that it is ultra vires art 10(1)(c) of the Federal Constitution;

(b) in *Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor* [1993] 1 MLJ 26 the Legislative Assembly of Sabah was held to be a proper party in a case where an application was made to declare art 18(2)(d) of the Sabah State Constitution null and void on the grounds that it is ultra vires art 10(1)(c) of the Federal Constitution; and

(c) the Legislative Assembly of Sabah was made a party in *Abdul Karim bin Abdul Ghani v Legislative Assembly of Sabah* [1988] 1 MLJ 171.

[29] It is our judgment that there is a plethora of cases where entities, created by the Federal Constitution, have been impleaded as parties, such as the Election Commission, the Police Force Commission and the Public Services Commission without the persons who make up these entities being named (see the cases of *Election Commission, Malaysia v Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716; *Owi Cheng Ian v Suruhanjaya Pasukan Polis Diraja Malaysia & Ors* [2014] 6 MLJ 695; and *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 7 MLJ 1).

[30] We would like to state that the assembly and the committee are made up of identifiable persons. Both are creations of the Selangor State Constitution. The assembly is a component of the State Legislature whilst the committee is a creation of the assembly made pursuant to the powers to regulate its own procedure under art LXXV(1) of the Selangor State Constitution. The assembly, pursuant to this power, made standing orders to establish the committee and its functions.

[31] One of the established functions of the assembly is to uphold the

privileges of the assembly. Punishing persons who have committed contempt of the assembly is one of its privileges. The committee has a duty under its Standing Order 70 to consider any contempt referred to it by the assembly. In this case the plaintiff contended that the resolution passed by the assembly and the subsequent decision of the committee imposing a fine of RM20,000 for the alleged contempt had affected the plaintiff's legal rights.

[32] We agree with the submission of En Amarjeet Singh of the Attorney General's Chambers appearing as amicus curiae that as the plaintiff is seeking declarations of his legal rights, he must secure a proper 'contradictor' who has an interest to oppose the declarations he is seeking. This principle of securing a proper contradictor by a claimant seeking a declaration was stated by Lord Dunedin in *Russian Commercial and Industrial Bank v British Bank For Foreign Trade, Limited* [1921] 2 AC 438 and followed by Abdul Hamid (CJ Malaya) in *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 at p 66 wherein it states as follows:

> The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.

[33] We are of the view that in the circumstances of this case the proper defendants or contradictors are before the court. From the facts, the parties having a true interest to oppose the declaration are the defendants, whose interest arises from the following facts:

(a) the assembly as a body was responsible for referring the plaintiff to the committee on the offence of contempt of the legislative assembly in the circumstances described in the summons;

(b) the committee heard the summons and fined the plaintiff RM20,000 for the said contempt; and

(c) the secretary, as it appears from the face of the summons, issued the summons pursuant to the Schedule of the Selangor State Constitution and its standing orders on behalf of the committee.

[34] We would take the view that in Malaysia the naming of the entities in the Federal and State Constitutions without naming the members thereof is an accepted procedural practice and does not prejudice the parties concerned.

[35] As regards the position of the second defendant, we are of the view that the secretary of the committee has a legal personality. It was sufficient if he alone was pleaded. The secretary was merely following orders made by the assembly. On the face of the summons signed by the secretary, he was acting

pursuant to the Schedule of the Selangor State Constitution and the standing orders on behalf of the committee. In the circumstances of this case the secretary is a proper party to oppose the declarations sought by the plaintiff.

[36] On the third question posed before this court, the issue for determination is whether the summon issued pursuant to a resolution of the assembly, which resolved that an alleged act committed by the plaintiff beyond its walls to be in contempt of the legislative assembly and requiring the plaintiff to show cause before the committee, is justiciable in view of art 72(1) of the Federal Constitution. Article 72(1) reads as follows:

> The validity of any proceedings in the Legislative Assembly of any state shall not be question in any court.

[37] It is to be noted that the construction of art 72(1) has come up for determination by our apex court a number of times. On this point it must always be borne in mind that the power of Parliament and the Legislative Assemblies of the States in Malaysia are limited by the Federal Constitution and the State Constitutions respectively. This principle is as stated by Suffian LP in the case of *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112 at p 113 which reads as follows:

> The doctrine of supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.

[38] As regards the application of art 72(1), previous cases have held that the court has jurisdiction to determine whether the resolutions passed by the legislative assembly exceeded the constitutional provisions. In the case of *Tun Datuk Haji Mohamed Adnan Robert v Tun Datu Haji Mustapha bin Datu Harun; Datuk Joseph Pairin Kitingan v Tun Datu Haji Mustapha bin Datu Harun* [1987] 1 MLJ 471 the respondent had applied to the court for declarations that his appointment as Chief Minister of Sabah by the first appellant was valid and the subsequent revocation of his appointment and of the appointment of the second appellant as Chief Minister was ultra vires the Constitution of Sabah and therefore null and void. The appellants raised, inter alia, a preliminary objection that the position of the Chief Minister was a privilege of the legislative assembly and that since the privilege had been exercised by resolutions passed by the legislative assembly on a motion of confidence on 30 May 1985 and other matters on 3 August 1985, the issues raised by the respondent are not justiciable. The Supreme Court speaking through Abdul Hamid CJ (Malaya) in upholding the dismissal of the preliminary objection held that:

> The Constitution has made the Courts the ultimate interpreter of the Constitution. The Courts accordingly cannot reject a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority.
>
> We cannot see any substance whatsoever in the contention that a privilege of the State Legislative Assembly is involved in the matter before us or that the jurisdiction of the Court to decide the issues raised is ousted as a result of the resolutions of the Assembly passed on May 30 and August 3 respectively.
>
> Motions of confidence or of no confidence or whatever passed in the Legislative Assembly might be political ratification or rejection of the choice made but cannot, in our view, affect the primary issues of the appointment and revocation which are legal and justiciable questions clearly within the competence and judicial consideration and determination.

[39] In the case of *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2014] 6 MLJ 812, the Federal Court held that the privileges under art 63(1) of the Federal Constitution cannot extend to displacing the provisions of a written law made pursuant to a provision of the Constitution in the absence of a written law to the contrary. In *Gobind Singh Deo*, a member of the Dewan Rakyat was punished with suspension and deprived of his remuneration as a Member of Parliament for 12 months for committing an act of contempt within the walls of the assembly pursuant to resolutions passed in the Dewan. The contempt and the punishment of suspension were held to be unimpeachable as they were within the jurisdiction of the Dewan Rakyat. However the court held that since the remuneration of a Member of Parliament was provided under the Members of Parliament (Remuneration) Act 1980 passed pursuant to art 64 of the Federal Constitution, the same could not be displaced in the absence of clear written law notwithstanding the resolutions passed by the Dewan Rakyat.

[40] Useful reference can be made to the case of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)*, a case very much similar to the present case concerning an act of contempt of the legislative assembly committed beyond the walls of the legislative assembly in relation to art 72(1) wherein the Federal Court held that:

> Article 72(1) of the Federal Constitution must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issue raised by the applicants are therefore justiciable.

[41] In *YAB Dato' Dr Zambry*'s case, the applicants, who were members of the Legislative Assembly of Perak, were found guilty and suspended from the legislative assembly for contempt of the legislative assembly which was

committed beyond its walls. The applicants contended that no provision was made pursuant to art LXIV of the Perak State Constitution in respect of the contempt while the respondents contended that the decision of the Committee of Privileges was a proceeding of the legislative assembly and therefore not justiciable under art 72(1).

[42] The Federal Court followed the Privy Council's decision in *Kielley v Carson* (1842) 4 Moo PCC 63 which, inter alia, held that in a case of contempt committed beyond the walls of the legislative assembly, the Legislative Assemblies in the British Colonies have, in the absence of express grant, no power to adjudicate upon, or punish contempt committed beyond their walls.

[43] The Federal Court in *YAB Dato' Dr Zambry* held that the legislative assembly had exceeded its powers as there were no provisions in the standing orders of the assembly made pursuant to art LXIV of the Perak State Constitution or the Perak's Legislative Assembly (Privileges) Enactment 1959 prescribing the alleged contempt the applicants were punished for. The suspensions of the applicants were therefore declared null and void.

[44] We noted that the basis for the decision in *Kielley v Carson* was that the legislative assemblies in the former British Colonies did not possess the powers of the House of Commons in England which had the power to punish acts of contempt committed beyond its walls. Baron Parke stated in his judgment the reason why the House of Commons possessed such power in the following words.

> The reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the lex et consuetudo Parliamenti, which forms a part of the Common Laws of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one.

[45] The Federal Court in *YAB Dato' Dr Zambry* also referred to the case of *Doyle v Falconer* (1866) LR 1 PC 328 where the Privy Council explained further the nature of the powers of punishment possessed by the Legislative Assemblies of the British Colonies in the following words:

> Is the power to punish and commit for contempts committed in its presence are necessary to the existence of such a body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberaties or proper action of a legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of

disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another'.

[46] As regards this appeal, it is our judgment the assembly must act within its constitutional and legal powers before the protection provided for by art 72(1) can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. The assembly's powers are limited by the Selangor State Constitution. The Selangor State Constitution expressly provides in art LXXVII as follows:

The Legislative Assembly shall have the privileges and powers set out in the Schedule thereto.

[47] A careful perusal of the provisions of the Schedule in the Selangor State Constitution, which confers the power and privileges of the assembly, reveal no provision that provides for contempt committed outside the legislative assembly. The defendants too have failed to show which provision in the schedule was relied on to pass the resolution. The assembly has therefore exceeded the jurisdiction provided for in the Schedule.

[48] We also note in the present case that the standing orders of the assembly and the Contempt of the House Enactment reveals no provision prescribing for contempt committed beyond the walls of the assembly. In the circumstances, it is our considered view that the resolution prescribing the alleged contempt and to refer the plaintiff to the committee of privileges is unconstitutional, being ultra vires the Schedule of the Selangor State Constitution and the standing orders of the assembly, made pursuant to art LXXVII.

[49] We find that the principle laid down in the case of *YAB Dato' Dr Zambry* applies to this case as the factual context of the present case are on all fours with the case of *YAB Dato' Dr Zambry*. The assembly being in the same position as the Perak Legislative Assembly, and the principle in *Kielley v Carson* having been accepted in *YAB Dato' Dr Zambry*, that in the absence of express grant, legislative assemblies have no power to adjudicate upon, or punish contempt committed beyond their walls, applies with equal force to the present case.

[50] As regards the cases of *Teng Chang Khim* and *Fan Yew Teng* relied on by the defendants, these cases in our view are distinguishable and irrelevant in the context of its application to the present case. In both the cases the subject matter was within the exclusive jurisdiction of the legislative assemblies and concerned internal matters.

[51] In *Fan Yew Teng* the plaintiff had been convicted for sedition. It was

resolved by the Dewan Rakyat that the question whether the plaintiff had become disqualified for membership of the assembly be referred to the Committee of Privileges. The plaintiff sought declarations to the effect that he had a right to exhaust his legal right to appeal and to petition to the Yang Dipertuan Agong for a pardon before the assembly could make a decision regarding his disqualification. It was held that the decision on the issue of disqualification of membership fell within the exclusive jurisdiction of the Dewan Rakyat by virtue of the then existing art 53 which states that 'If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final'.

[52] In both the cases of *Teng Chang Khim* and *Fan Yew Teng* there was no dispute as to the existence of the privilege. The occasion, manner of the exercise and appropriateness of the exercise of matters concerning the internal affairs of the Assembly are clearly within the ambit of the proceedings in the assembly or a committee of the assembly which cannot be questioned by the courts.

CONCLUSION

[53] For the above stated reasons we find that there is no merit in the appeal. We answer the first and the second questions posed in this appeal in the affirmative. The third question is answered in the negative. The appeal is therefore dismissed with costs.

Appeal dismissed with costs.

Reported by Kohila Nesan